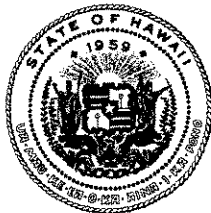
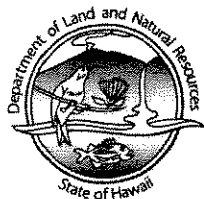


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM #555
KAPOLEI, HAWAII 96707

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CHAIRPERSON
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**O'AHU ISLAND BURIAL COUNCIL MEETING
MINUTES**

DATE: WEDNESDAY, FEBRUARY 9, 2005
TIME: 10:00 A.M.
PLACE: STATE OF HAWAII
DEPT. OF LAND AND NATURAL RESOURCES
1151 PUNCHBOWL STREET, ROOM 132
HONOLULU, HAWAII 96813

ATTENDANCE:

Members: Van Horn Diamond, Chair
Coochie Cayan, Vice-Chair
Chuck Ehrhorn
Analu Josephides
Kalei Kini
Kehaulani Kruse
Aaron Mahi
Tom Shirai
Nettie Tiffany

Absent: Cy Bridges (excused)
Jace McQuivey (excused)

Staff: Melanie Chinen, Administrator
Mary Carney, Historic Sites Specialist
Sunny Greer, Administrative Assistant
Vince Kanemoto, Deputy Attorney General
Kana'i Kapeliela, Historic Sites Specialist
Nathan Napoka, History and Cultural Branch Chief
Jocelyn Nazareno, Historic Preservation Specialist

Guests: Christy Shelby
Alex Luka
Miles Takaki
Iwalani Keana'aina
Vicky Keana'aina
Luther Keana'aina

Wilsam Keana'aina
Paulette Kaleikini
Moses Haia III
Carolyn Norman
Lori Lucking

I. CALL TO ORDER

Meeting called to order by Chair Diamond at 10:30 a.m. Carney did a verbal roll call. Diamond opened the meeting with a *pule*.

II. OPENING REMARKS

Diamond shared that today was Ash Wednesday for Christians, as well as the end of Chinese New Year. He noted that both the Muslim holiday and Passover was forthcoming.

Diamond announced that at the request of the landowner, who is located at the mainland, Item IV-A of the agenda has been deferred until April.

Diamond strongly recommended that members read Reports No. 02- 20 and 04-14 from the Office of the Auditor, which was included in the members' packets. Diamond said the audit reports identify the challenges the Council has experienced throughout the years, particularly lack of staffing for the Burial Sites Program, as well as concerns regarding planning and budgets in service of Island Burial Councils. Diamond commented on Federal funding that could have been available for the Burial Sites Program in 2000.

III. APPROVAL OF JANUARY 11, 2005 MEETING MINUTES

The following corrections were noted:

Page 2, last sentence: Change "world" to "word."

Page 3, Paragraph 1: Change "Hala" to "Hale."

Page 3, Item IV-A, Paragraph 2: Change "schoolmates" to "related."

Page 6, Item C, Paragraph 8: Josephides requested that the circumstances behind his late arrival at 12:25 p.m. needed to be inserted in the minutes. Insert "Josephides' late arrival was due to his lack of receipt of a packet the rescheduled date for the January 2005 meeting. He was alerted to the change of date by Kupuna Alice Greenwell, who happened to see him at the Bureau of Conveyances and alerted him that a Council meeting was taking place."

Page 7, Item D, Paragraph 3: Josephides clarified that he voted *kanalua*. Delete "(Josephides did not vote)" and insert "Josephides voted *kanalua*."

Page 7, Item D, Paragraph 4: Change "Makapu" to "Mokapu."

A motion was made to accept the minutes for January 20, 2005 as circulated and amended.
(Kini/Cayan)

VOTE: ALL IN FAVOR.

IV. BUSINESS

A. BURIAL TREATMENT PLAN FOR SITE -6532 LOCATED AT KAIKA BAY, KAMANANUI AHUPUA'A, WAIALUA DISTRICT, ISLAND OF O'AHU [TMK: (1) 6-7-01:51 & 52]

Information/Determination/Recommendation: Presentation of Burial Treatment Plan for a Previously Identified Burial Found During Inventory Survey. Council Determination to Preserve Burial in Place or Relocate Burial to Pu'uiki Cemetery. Council Recommendations to the Department on the Burial Treatment Plan.

Diamond said the Department informed him that the landowner requested that this agenda item be deferred until April.

A motion was made to defer this agenda item to the Council's April 2005 agenda.
(Cayan/Shirai)

VOTE: ALL IN FAVOR.

B. VARIOUS ELECTRICAL IMPROVEMENTS PROJECT AT FORT DERUSSEY, WAIKIKI AHUPUA'A, KONA DISTRICT, ISLAND OF O'AHU [TMK: (1) 2-6-5:001]

Information/Recommendation: Informational Presentation by Army Corps of Engineers on Upcoming Electrical Cable Replacement Project.

Christy Shelby came forward to present this agenda item on behalf of the Army Corps of Engineers (ACOE). She previously came before the Council at its November 2004 meeting to discuss an Archaeological Monitoring Plan for cabling at Fort DeRussey. The project involves the replacement of existing cabling, which will require excavation. Shelby noted that human remains were discovered in the past, thus an archaeological monitor would be on site.

Shelby requested the names of lineal descendants to the area, so as to notify them of the project. Cayan directed Shelby to refer her request to SHPD staff. Shelby indicated that she requested the information at the November 2004 meeting. Cayan recommended that Shelby submit her request in writing to SHPD staff.

Napoka said that since the project was a federal undertaking, Shelby should refer back to Section 106, which specifies that federal agencies must show a good faith attempt in consulting with Native Hawaiians. Thus, SHPD was not responsible for the liaison work. Napoka recommended that the consultant selected should have experience working with Native Hawaiian communities. Shelby was under the impression that the Council fulfilled the consultation criteria. Napoka clarified that the Council was merely one of many Native Hawaiian groups that should be consulted in the process. Napoka pointed out that the Council was not responsible for providing a list of Native Hawaiian organizations to the ACOE.

Cayan suggested that advertisements in the newspaper would be beneficial, to which Lucking said was previously published. Cayan said another advertisement might be needed. Diamond suggested some families to contact. Cayan referenced the oral history of Waikiki as a possible resource. Napoka said the Department could provide names of descendants, but not their contact information. To do so would be in violation of the descendants' personal privacy rights. At Cayan's request, Shelby answered that the cabling project would provide additional power for the Asian Pacific Center, which was located by the parking structure. There was an opportunity to conduct ground-penetrating radar to identify anomalies prior to excavations.

Napoka was concerned that there be meaningful consultation with Native Hawaiian communities, and that such consultation should be conducted by an experienced consultant. Diamond asked that SHPD provide names to the ACOE.

Kuhea was concerned about a list of recognized descendants in the Waikiki area, and whether Kapeliela provided the Council with such a list. Diamond clarified that the matter in question was a list of descendants in the project area, and whether SHPD could provide names to the ACOE.

Cayan said she knew of families in the project area and would notify these families of the ACOE's interest in contacting them. Diamond reiterated that there was oral history in the public libraries of the Waikiki area. Josephides said that he was also aware of families in the area and would provide them to the ACOE.

Upon discussion with Carney, Napoka said that at the Council's November 2004 the ACOE were provided with names by SHPD staff as requested. Napoka asked if the ACOE did some follow up upon receipt of the names. Lucking said that after the meeting, they met with the attorneys from Wal-Mart. Lucking admitted that the ACOE put the project on hold for a while because the staff assigned to the project went to Washington. The project has since been reassigned and the process was moving forward.

Josephides confirmed Napoka's assertion that the Council provided names to the ACOE at the November 2004 meeting. He recalled the names he had previously given were the same names that he would provide again today to the ACOE. He admonished the ACOE to take better records to prevent having to repeat the process.

Cayan asked when the project would commence. Lucking said they estimated the project to begin in April, but anticipated that it will be postponed until June. Completion date was dependant on whether or not human remains were encountered.

Napoka said the ACOE needs to be specific as to which project site necessitates a descendant list. He noted that the Fort DeRussey area would need a list from projects in close proximity to the area. He disclosed that a family that does not come up on any of the written lists was the Bob Paoa family. He noted that Paoa's phone number was available in the phone book, and that the Paoa-Kahanamoku families could be a resource for other family names.

Shirai expressed that SHPD staff should provide a list of recognized descendants to every project and have such a list readily available at every Council meeting. Josephides said minutes to previous Council meetings were available online at the SHPD website. Kuhea said that the public could also access the information at the SHPD office.

C. UPDATE ON PREVIOUSLY IDENTIFIED AND INADVERTENT BURIAL DISCOVERIES AT PARCEL BOUNDED BY TUSITALA STREET, LILI'UOKALANI AVENUE, CLEGHORN STREET AND KAPILI STREET, WAIKIKI, KONA DISTRICT, ISLAND OF O'AHU (TMKs: 2-6-024:034-040, 042-045)

Information/Recommendation: Status Update by Staff Regarding Previously Identified and Inadvertent Burial Finds at Tusitala Property.

Carney shared that she and SHPD Administrator Chinen met with the owner of Okada Trucking at the project site. An Inventory Survey by Cultural Surveys Hawaii (CSH) was submitted to the Department in 1996, wherein SHPD requested revisions and additional testing. None of the requested testing or revisions was ever completed. During the 1996 survey, a burial was found but it did not go through the appropriate process of completing the revised Inventory Survey, Burial Treatment Plan and Island Burial Council determination.

The burial of 1996 was disturbed in 2002 from grubbing by another company Okada Trucking informally contracted. Three burials were inadvertently discovered *in situ*, and the previously identified burial was removed. CSH returned to the site in early 2003, sifted through 5-6 large sand piles and brought the human skeletal remains to the SHPD office.

Carney said she inventoried the *iwi* and identified one fairly complete adult male, which she believed to be the previously identified burial. Two other adult individuals were identified, which she believed to be the disturbed *in situ* burials. She also identified the remains of two children, a baby between 0-2 years old, the other child being 5-8 years old.

Carney stated that the Department requests that Okada Trucking complete the Inventory Survey, and upon its acceptance, a Burial Treatment Plan should be prepared. Determination for the inadvertent burials was preservation in place and the remains in SHPD custody were to be returned to the site.

Cayan inquired on whether the *iwi* were complete sets. Carney shared that the two juveniles were fragments and the *iwi* in SHPD custody was complete.

Diamond asked about the follow up from DOCARE, in at least two instances. Carney disclosed that DOCARE was unable to find the report.

Chair Diamond called for a 5-minute recess. He surrendered his Chairmanship to Vice-Chair Cayan for the next agenda item. Hearing no objections, Diamond called a recess at 11:10 a.m.

Vice-Chairman Cayan resumed the meeting at 11:25 a.m.

D. PRESENTATION BY HALE O NA ALI'I

Information/Recommendation: Presentation by Hale O Na Ali'i Regarding Status as an Appropriate Hawaiian Organization.

Vice-Chair Cayan noted for the record that Chair Diamond stepped down and turned the meeting over to herself as Vice-Chair, since Diamond would be making a presentation before the Council on behalf of Hale O Na Ali'i o Hawai'i (HONAOH).

Diamond shared that since the organization's State President, Hailama V.K.K. Farden, was unavailable, he would be presenting on the organization's behalf. Diamond referenced a letter by HONAOH dated September 13, 2004 to the NAPGRA Committee, which was provided in the members' packets.

Diamond said that under state law, appropriate Hawaiian organizations are recognized by Island Burial Councils and the intent of today's presentation was to be designated as such. Diamond recalled that SHPD provided a listing of appropriate Hawaiian organizations to him when he was first selected as a Council member. He noticed that the list needed to be updated, as some of the organizations on the list were no longer solvent or living. Diamond mentioned another list that included input from the Office of Hawaiian Affairs and other Native Hawaiian organizations.

Cayan asked if HONAOH was knowledgeable of Native Hawaiian burial practices. Diamond referenced the aforementioned September 13, 2004 letter. Diamond provided references to examples of funeral rituals and specific roles of specific organization members.

(Tape 1, Side B)

Diamond read documents of the society, which contained private information of the organization and was not submitted for public distribution. On behalf of the organization, Diamond requested that HONAOH be reinserted on the list of appropriate Native Hawaiian organizations maintained by SHPD. Mahi inquired as to why the organization needed to be put back on the list. Cayan said that according to Diamond, the last list he saw did not have HONAOH, when in fact a previous list had the organization listed.

Josephides asked Diamond for clarification. With all due respect, as a member of Mamakakaua, Josephides questioned HONAOH's claim that they were "the only Hawaiian organization that has written burial rituals and protocols dating back to the time when high *alii* were among us." Josephides and Diamond agreed that there might be other Native Hawaiian organizations that may have written burial rituals and protocols.

Shirai supported the intent of the presentation, but asked that recognition of organizations by the Council not be limited to only organizations with Hawaiian names. He used Mokuleia and Waianae Community Associations as examples of organizations with many Hawaiian members. Cayan commented that the actual practice and traditions of burial practices were the intent of chapter 6E to recognize Native Hawaiian organizations. Shirai asserted that some organizations might have the knowledge, but have never formally written them down as other organizations.

Josephides referred to the Auditor's report, which emphasized the oral traditions, which is just as important as the written information. Josephides inquired of Diamond if the HONAOH's protocols were for public knowledge or available only to members. Diamond said it was for members only. Napoka disclosed for the record that his grandmother and mother were members of HONAOH, when the meetings were still in Hawaiian. He said he has been a member for 30 years, but he is not affiliated with the presentation.

Cayan reiterated that the documents Diamond referred to in his presentation were not public documents. Diamond believed that HONAOH was an appropriate Native Hawaiian organization and requested that the Council afford them that recognition. Cayan asked the Council if they

wanted to defer this item until the Council's next meeting, to provide members an opportunity to review chapter 6E. It was Cayan's understanding that there was no Council mechanism to recognize organizations, and that SHPD maintained such a list. Deputy Attorney General Kanemoto asked the Council if they would like to go into Executive Session to consult with their attorney.

A motion was made to go into Executive Session to consult with counsel on the matter. (Mahi/Shirai)

VOTE: ALL IN FAVOR.

Council went into Executive Session (without Diamond) at 11:49 a.m.

(EXECUTIVE SESSION – MINUTES NOT FOR PUBLIC DISTRIBUTION)

A motion was made to come out of Executive Session. (Ehrhorn/Mahi)

VOTE: ALL IN FAVOR.

Council came out of Executive Session and resumed the public meeting at 12:15 p.m

A motion was made to defer this issue until next month when staff can return to the Council with some strong guidance as to how the Council can proceed on this issue. (Ehrhorn/Mahi)

VOTE: 8 Yes (Cayan, Ehrhorn, Josephides, Kini, Kruse, Mahi, Tiffany, Shirai) (Diamond recused).

Diamond resumed his role as Chair of the Council.

(Tape 2, Side A)

E. CLARIFICATION OF LINEAL DESCENDENCY STATUS TO SPECIFIC BURIALS AT MAKALOA-SHERIDAN SAM'S CLUB/WAL-MART PROJECT, KALIA, MAKIKI AHUPUA'A, HONOLULU (TMK: 2-3-16; 9 & 19)

Information/Clarification/Recommendation: Council to clarify its 12/20/04 motion regarding the recognition of the Keana'aina family as lineal descendents to specific burials at Sam's Club/Wal-Mart project. Status update by State Historic Preservation Division staff.

SHPD Administrator Chinen, accompanied by Napoka, approached the Council and read into the record their memorandum to the Council dated February 9, 2005. Chinen read the "Background" portion of the memo and Napoka read the "SHPD Recommendation for Lineal Claim of Burial Z" and the "SHPD Recommendation for Lineal Claim to All Burials Located in Findspots 1, 3, 4, and 5" portions of the memo.

Cayan requested input from other claimants regarding SHPD's recommendation to defer. Keana'aina family member Alex Luka, who identified himself as the cousin of Miles Takaki, approached the Council as being from the family of the subject property. He noticed inaccuracies to

SHPD's recommendation, particularly with regards to the Kekaula mentioned in SHPD's memo. Luka claimed the Kekaula SHPD referenced was not their families' ancestor, as their *tutu* was in school at the same time with Kalakaua. Luka said they had documentation of their claim.

Luka shared that the grandmother of the three children was born well before the Kekaula that SHPD referenced. The property had been in the family for years and the family had the LCA to prove it. Luka alluded that the SHPD process may be arbitrary and requested that other competing claimants bring forth similar documentation that they were asked to provide to the Department. Luka asked if there was a competition of some sort among families.

Takaki said the Keana'aina family had records to validate their claim. In their hearts, they believed that all the burials are family. When they came to claim, they came for all [burials]. They had information of burials that were buried within weeks, within months of each other. They felt that all the burials are all family. Takaki said there was oral information from their *kupuna*, not written information. In their hearts, they felt that all burials were *ohana*. Takaki clarified that they had written records that show their family was on the property.

Luka said they were present not to take away anyone's *kuleana*, but to take care of their own *tutu*, which was their family's *kuleana*. Cayan asked if Luka and Takaki were willing to share any documentation that would correct SHPD's inaccuracies. Luka said they were still working on their *tutu*, Kekaula, and there were other places where they needed to seek such information. Luka asserted that there was information that was not located in the standard sources such as the Archives or the Bureau of Conveyances. He said they were still working on researching further documentation of their claim.

Luka believed the matter could have been resolved if the people who identified the property by TMK thoroughly researched the LCA. Publishing the notice for descendants of the LCA and RP would have identified the families earlier.

Kaleikini asked Takaki if Ruby McDonald was one of the *kupuna* for the Keana'aina family. Takaki answered in the affirmative. Kaleikini asserted that McDonald questioned the Keana'aina's claim before the Council and that the Keana'aina family did not belong there. Takaki asked if McDonald personally told Kaleikini that information. V. Keana'aina said Kaleikini did not have the right to speak on behalf of McDonald. Diamond said Kaleikini's comments were hearsay. Kaleikini questioned the validity of the Keana'aina's claim, stating that the Jonah Puamana ancestor was born and died in Kohala. Luka rebutted Kaleikini's comments, saying that as voyaging people, their ancestors traveled from their homeland and returned back upon their death.

V. Keana'aina announced that SHPD Administrator Chinen issued a stop-work on the *iwi* and that she set a reburial date for February 18th. Keana'aina asked if the Council was aware of that information, to which Cayan answered in the affirmative.

Josephides asked if the *iwi* were inadvertent. Cayan said they were.

L. Keana'aina testified that his grandfather told them that the Wal-Mart area was where their *kupuna* came from.

Josephides asked if it were possible that both of the conflicting families might be related and come from the same area. He asked if there was a process to have the Kaleikini-Norman family and

Keana'aina families work together in the spirit of doing what's right for the *iwi*. He felt uncomfortable with the *kaumaha* between the families. He said one's self interests should defer to the common ground for the benefit of the *iwi*. He asked for forgiveness for his *mana'o*, but he felt saddened by having *kanaka maoli* fighting amongst themselves.

Takaki said that if their family felt that another family had claim to the *iwi*, they would gladly step back. Likewise, he hoped that another family would do the same. However, the Keana'aina family felt that these *iwi kupuna* are of their family.

Josephides referenced SHPD's Recommendation #2 of the memo to the Council and asked if primary documentation and supplementary records were used to assert their claim. Primary documentation means birth, marriage, and death records. Josephides said that the Jonah Puamana cited who was born and died in Kohala could be likened to his *kupuna*, who died in the Wal-Mart smallpox area and his family came and picked him up and took him home to Kona. Josephides said that his family was afforded that opportunity because his *kupuna* was a captain in the military at that time. However, the records state he died in South Kona, when in actuality he died at the smallpox hospital at the Wal-Mart site. Josephides questioned SHPD's interpretation of Puamana's records and requested clarity.

Josephides also took issue with page 3, item 4 of SHPD's memo which mentioned a burial found with "hat rivets, epaulets, and a trouser braid indicating the individual was buried in a uniform and has a high probability of being of non-Hawaiian origin." Josephides paralleled that if he were to take people to his family cave on land that the family owned, his *kupuna* was buried in a uniform of Kamehameha's regime. Josephides believed that SHPD's claim of "non-Hawaiian origin" was merely an assumption. Josephides asked for further documentation and additional clarity.

Napoka provided that the individual in question was never identified as a specific burial being claimed and the issue was moot. He answered that the records in terms of the death in Kohala was brought forward to SHPD from a family as a private genealogy. Pedigree charts were presented to the Department through Kapeliela. Josephides said that actual pedigree charts were not considered by the State or the Circuit Court as primary documentation.

Amidst the discussion, Administrator Chinen reluctantly disclosed that a recognized descendant from the Keana'aina shared with the Department that Jonah Puamana was buried in Kohala. Josephides asked if the descendant was Ruby McDonald. Chinen declined to answer. Josephides wanted more information to better help the Council make their decision.

Cayan asked Diamond if the Council could vote to enter into Executive Session to consult with the Attorney General. Kaleikini approached the Council, requesting that the Council enter into Executive Session to discuss her family's genealogy. Cayan asked Diamond for clarity on the reason for Executive Session, as she only desired an opportunity to consult with counsel.

Deputy Attorney General Kanemoto advised the Council to enter into Executive Session under chapter 6E-43.5(d) to discuss Kaleikini's concerns. Kanemoto further counseled that the Council could then come out of the closed meeting and later vote again to go into another Executive Session to consult with their attorney on the Council's rights, duties and obligations. Kanemoto asked if the question was being raised with respect to what had been already agendized. Cayan wanted to know whether the Council's duties were based on the information presented before them today.

Kanemoto believed that the input that Kaleikini was proceeding to give the Council related to the clarification of the lineal descendant claim being made by the Keana'aina family. Kaleikini said that her input was to reaffirm her family's ties to the area. Kaleikini said her information was tied in to the Council's decision regarding the Keana'aina's lineal claim. Kanemoto believed it was sufficiently agendized.

Diamond recalled the previous Council meetings where Kaleikini provided information to the Council regarding her family's claim. Diamond asked Kaleikini if she had new, additional information different from that previously presented. Kaleikini said she has new information. Josephides asked if the information previously presented was given before July 2004, when he was not on the Council. If so, he requested to hear the information so he could make an informed decision.

Kanemoto advised the Council to make a motion to go into a closed meeting to discuss genealogical matters relating to the Kaleikini-Norman family pursuant to chapter 6E-43.5(d). Ehrhorn asked to whom the meeting was closed. Kanemoto said if the Council deemed it necessary to have staff present, it was up to the Council. However, the public should be excluded from closed sessions. Ehrhorn asked what the basis was for closing the meeting, to which Kanemoto cited 6E-43.5(d). Ehrhorn asked for the specific language in the statute.

Kanemoto cited the aforementioned statute: "The councils shall hold meetings and acquire information as they deem necessary and shall communicate their findings and recommendations to the department. Notwithstanding section 92-3, whenever the location and description of burial sites are under consideration, the councils may hold closed meetings. Concurrence of a majority of the members present at a meeting shall be necessary to make any action of a council valid."

Mahi asked if the closed meeting was relevant to location or because the claimant had asked to close the meeting. Kanemoto answered location, genealogical information relating to description. Diamond asked if that limited scope also included what had been agendized. Kanemoto said it was at the Council's discretion. Mahi felt that it was not an adequate basis for close the meeting. Mahi saw that the claimant came forward and requested a closed meeting.

Norman clarified that their testimony was to confirm her family's genealogy and indirectly discuss the Keana'aina's genealogy. Ehrhorn said he felt uncomfortable excluding the Keana'aina from the discussion if someone was discussing their genealogy. Asking for fairness and equity, Norman said their family was not involved when the Council previously went into closed session to discuss genealogy. Ehrhorn said the difference was that the Keana'aina family never raised the topic of the Kaleikini's genealogy. Norman said that earlier in the meeting today, the Keana'aina family publicly requested documentation from the Kaleikini-Norman family, to which she was coming forward to provide to the Council.

Diamond said that in the past, when Kuhea came forward to question genealogy, such disputes needed to go to the Department for review. Diamond sought guidance as to whether this situation fit in with past practice. He said that the process has no feeling for the players. Kanemoto asked if the Council wanted to consult with their attorney to discuss the legal aspects.

A motion was made to go into executive session to consult with their attorney relative to addressing this issue. (Ehrhorn/Aaron)

VOTE: 7 Yes (Diamond, Ehrhorn, Josephides, Kini, Kruse, Mahi, Tiffany) (Absent: Cayan, Shirai).

Council went into Executive Session (without Cayan and Shirai who momentarily left the room earlier) at 12:54 p.m. Cayan and Shirai entered the room after the vote was taken.

The Council asked that everyone leave the room except Council members, counsel, and SHPD recorder Nazareno.

(EXECUTIVE SESSION – MINUTES NOT FOR PUBLIC DISTRIBUTION)

(Tape 2, Side B)

Mahi left the meeting at 1:06 p.m.

A motion was made to come out of Executive Session. (Cayan/Tiffany)

VOTE: ALL IN FAVOR.

Council came out of Executive Session and resumed the public meeting at 1:15 p.m

A motion was made to go into Closed Session to hear the testimony by Paulette Kaleikini regarding her genealogy and her connection to the Wal-Mart burials. (Cayan/Tiffany)

VOTE: ALL IN FAVOR.

The Council asked that everyone leave the room except Council members, Kaleikini, Norman, Haia, Kanemoto, and SHPD staff Nazareno and Kapeliela. Napoka asked why Kapeliela was allowed to stay in the room and he was not. Kapeliela said both he and Napoka worked on the genealogical claims. Diamond said the recommendation was made by the Council's attorney. Napoka said he was leaving. SHPD Staff Chinen, Napoka, Carney and Greer left the meeting. Diamond hoped Napoka was available when the Council calls on him.

Council goes into Closed Session at 1:20 p.m.

(EXECUTIVE SESSION – MINUTES NOT FOR PUBLIC DISTRIBUTION)

A motion was made to come out of Executive Session. (Ehrhorn/Cayan)

VOTE: ALL IN FAVOR.

Council came out of Executive Session and resumed the public meeting at 1:48 p.m

Takaki said he spoke to Keana'aina family member Ruby McDonald and said she was available on speakerphone to refute Chinen's claim that McDonald told her that Jonah Puamana was buried in

Kohala. Haia said if the Council chose to allow McDonald to be on speakerphone, then the person who was involved should be present.

At Cayan's request, Diamond called a 5-minute recess.

(Tape 3, Side A)

The meeting resumed at 2:00 p.m.

Diamond asked if there were anyone present that wanted to provide additional information before the Council proceeded. Cayan asked if Luka could come forward to present his *manao* based on a discussion with McDonald. Cayan encouraged Luka to share his comments on SHPD's memo to the Council dated for today. Luka said he was not afforded with a copy earlier, but has recently read the document.

Luka said upon reviewing SHPD's memo presented earlier to the Council today, he took issue with the statement by SHPD that "The family also claims that Kekaula and Kekaaniau Pratt are the same person." Luka refuted that statement, saying his family never made that claim.

Takaki shared that he recently spoke to McDonald and asked if she had spoken to Chinen and/or Kaleikini, to which McDonald answered in the negative. McDonald said she did speak to SHPD staff, particularly Kapeliela. However, the context of their discussion was not about the subject that Kaleikini claimed earlier in the meeting.

Luka commented on SHPD's memo to the Council, particularly in regards to SHPD's Recommendation for Lineal Claim of Burial Z (page 2). Luka read, "the Keana'aina family claims descent through Kekaula." He agreed that the statement was correct. He again refuted the second sentence, that "the family also claims that Kekaula and Kekaaniau Pratt are the same person." Luka said that statement did not come from his family. Cayan asked if Luka would address the rest of the SHPD memo in a separate document.

I. Keana'aina said she understood that there were some problems with their genealogy. She was upset with the fact that the memorandum Kanai provided to the Council at the last meeting left out some parts. She said she went to the Department and researched the microfiche and reviewed 117 pages of one application. She said she used the same documentations that Kanai used and tried to present it to her family so they would understand what it was all about. She simplified it and used a format similar to what Kanai was using to compare. She said anyone can view the public records and look at application #20. She referenced an inter-office memo from J.M. Monsaratt to Judd regarding Kalua was the biological daughter of Kekaula. She said there was nothing signed by their family stating that everything in the memorandum was confirmed. She said if anyone's interested, it's land court application #20.

Cayan asked I. Keana'aina if there were any documentation in that *palapala* she referenced that showed their *ohana* was tied to Burials 1, 3, 4, and 5. She said there were many documents to sort through. Josephides asked if any of the documents specifically talked about specific burials of their family on that property. I. Keana'aina answered in the negative, saying the documents were mainly about transactions that happened during the time Kekaula received the grant, as well as old pictures.

Kapeliela said from the Department's side, the land transactions that were reviewed and cited were done so to determine when the land left the family, as opposed to looking at every single transaction. The purpose was to determine when the piece of land left the family did not own the property. Josephides said that Kapeliela looked at when the land left the family, but did he research when the family left the land? Kapeliela said the documents reviewed did not reveal any specific information of that sort. Rather, focus was on when their interest in the land was sold off to people like Monsarrat and others. Josephides asked if there were a possibility that the land could have been sold and the family still resided on the property? Kapeliela said possibly, but he did not see either way in the LCA.

V. Keana'aina said the documents the family presented in October 2004 with respect to the boundary lines were supporting evidence to go with information they got from the archaeologist. The archaeologist believed the burials were dated from the mid-1800s, and were dated based upon the burial goods associated with the burials. She said all the supporting documents presented in October were from that time period and dated earlier from the time of Kamehameha I. She said it was important in comparison to SHPD evidence that was dated at a later time period.

W. Keana'aina said the documentation provided to the Council was basic, simple, and black and white. He said if you cannot bury after 1856, and my family left the property at 1870, common sense tells you there's nobody else that could be buried there. He did not know how SHPD came up with the idea that the burials were buried later. He said their family was always there. When the family left, the burials remained there. People later built homes on the burials. He said they had documentation and proof of that, it's on the property lines, it's under the homes. In the late to mid 1900s, when the homes were demolished, the burials were inadvertently discovered the first time and today we are here. He said it was ridiculous to be battling over something very simple. He said all they want to do is take care of their family and put them back to the ground. He said no one, not even the State has given them that opportunity and it's about to become upsetting. They offered it to other families and opened it up to do this peacefully, one time and get it over with. But there's so much resistance on something that's so simple. He said would not go to your house and tell you how to bury your family, so do not come here time and time again and tell us how to bury ours.

Kaleikini thanked W. Keana'aina for his comments. She said as long as they *holo mua* with the reinterment next Friday, she was good with that. She said the family coming forward for the lineal claim was okay if they want to *malama* the *kupuna* right away and rebury. However, she said it seemed as if the Keana'aina family sought lineal recognition to keep the *kupuna* out. She asked if the Keana'aina family's intentions were to *malama na iwi kupuna* or did they want to study them with Aki as some of their members were doing right now. She was disturbed because her family's *kuleana* is to *malama na iwi kupuna* as soon as possible. Kaleikini said although her family has records that her ancestors were buried in Kalia, they were not so arrogant as to claim one *kupuna* as being their *kupuna* merely by name. She said her family just wanted to *malama* and put them back. Whereas, the Keana'aina family have *kupuna* in Kona right now that have been sitting in containers at the Old Kona Airport for 2 years.

Diamond said Kaleikini was out of order. Kaleikini said the Keana'aina were the only descendants to the Kona *kupuna*, and why haven't they taken care of them? Diamond repeatedly cautioned Kaleikini to not go there. Diamond repeated that Kaleikini was out of order. Kaleikini continued her tirade.

Diamond called for a recess at 2:16 p.m.

Kaleikini continued, saying the Keana'aina's *kuleana* was to see how long they could leave their *kupuna* sitting out in the sun to dry. She said if they wanted to talk about *malama kupuna*, they should start with Kona.

Diamond resumed the Council meeting at 2:23 p.m.

Diamond asked if anyone wanted to provide additional testimony. Luka said it was his understanding that in March 2004, there was an agreement to target March 2005 as a target date for reburial. He said it was reiterated again in October 2004 that Aki Sinoto required the time. He said they were being professional about it to allow Sinoto the time to complete his work. He said they were trying to accelerate something that has been dragged on for a long time. Luka said he wanted to ask if the Council would give consideration to address that issue.

W. Keana'aina said their family is against the reinterment of next week. He said they were not here to study the bones, especially their families' bones. They just want reassociation. Once reassociation of the bones are complete, then that is when they will be content with the work and move towards reburial.

Josephides asked if any reassociation has occurred in order for the *iwi* to be buried together. Cayan asked Josephides to direct his question to staff. Kapeliela said his understanding is that Department staff will be taking over the reassociation before the reinterment. Josephides asked if that could be put in writing as evidence to the families of what was going to happen. Haia and Kaleikini objected to Josephides' request. Kanemoto said this was going beyond the agenda. Diamond asked Kapeliela to answer the question. Kapeliela said he could go back to his superiors and check, but it would most likely be clarified at Friday's descendants meeting.

V. Keana'aina said her family objected to SHPD's archaeology staff because they strongly questioned their qualifications. She said SHPD was given a letter. Cayan interjected that this was beyond their scope of the agenda. Kanemoto and Diamond agreed. Cayan apologized to V. Keana'aina and said the Council had nothing to do with that part.

Kapeliela announced that during the break he called Administrator Chinen to ask if staff would return to the Council meeting. Apparently, the staff was in another meeting. Kapeliela noted to the Administrator that there was a question regarding the earlier discussion about comments supposedly made by Ruby McDonald. Kapeliela said he was asked to make a point of clarification that Chinen did not say that she spoke to McDonald, nor did she mention anyone's name. Kapeliela said he was asked to make that point.

**A motion was made to clarify the Council's December 20, 2004 motion regarding the recognition of the Keana'aina family as lineal descendants to Burials 1, 3, 4, and 5 as indicated on the maps that were provided to the Council at the December 20, 2004 meeting.
(Cayan/Shirai)**

Cayan shared that based on what was presented to the Council up to the December 20, 2004 meeting; and documentation based on her personal knowledge that not a lot of our cultural and traditional things were documented or written; and those things that her family practices, and the oral history passed on to her; based on all those many things, and based on the *manao* and all the

contention among these *ohana*, that's how she made her decision at that time. Based on what she was provided, what she knew, the known cultural practices, and working with many *kupuna*, she felt the Keana'aina family had shown enough to her. She said to all the *ohana* out there, come, get rid of the Council, take this *kuleana* and let your families take care.

Kapeliela suggested the Council might want to amend their motion to refer to Native Hawaiian burials because non-Native Hawaiian burials are under the jurisdiction of the Department. Generally, the Department is the body that recognizes lineal or cultural descendants to non-Hawaiian burials.

Cayan thanked Kapeliela and said she would take that as a friendly amendment to Native Hawaiian burials. Diamond said it was for clarification purposes, that it would refer specifically to Native Hawaiian burials and that was the intent. Diamond asked if everybody understood the intent.

Diamond asked if there was any other discussion. Diamond asked if the Council was ready for the motion. Cayan said ready for the vote. Diamond did a roll call on the vote.

VOTE: 7 Yes (Shirai, Kini, Cayan, Tiffany, Diamond, Josephides, Kruse); 1 No (Ehrhorn)

Diamond announced that there were 7 Yes and 1 No and the motion carried. He said lineal descendency status has been afforded to the Keana'ainas with specificity. Diamond repeated that the motion carried and the vote was 7 to 1.

V. ANNOUNCEMENTS

There were no announcements.

VI. ADJOURNMENT

A motion was made to adjourn the meeting. (Cayan/Tiffany)

The motion was made and seconded. Diamond asked for any discussion. Diamond said before closing, he wanted to make a final friendly reminder. It was made a while ago, and was also made at this meeting at one point. Diamond said the *kuleana* for the reinterment of the *kupuna* at Wal-Mart begins with the Burial Treatment Plan and all the families. He said the families have to work it out together.

VOTE: ALL IN FAVOR.

Meeting adjourned at 2:35 p.m.

Respectfully Submitted,

SHPD Staff